

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSH AUXIER & COLEEN AUXIER,

Plaintiffs,

v.

FREDERICK J. HANNA & ASSOCIATES,
P.C.; SUTTELL & HAMMER, P.S;

Defendants,

FIA CARD SERVICES, N.A.;

Co-Defendant.

No. 12-cv-0288 MJP

DEFENDANT SUTTELL &
HAMMER, P.S.'S ANSWER

Defendant Suttell & Hammer, P.S. ("Suttell") answers plaintiffs' Complaint for
(1) Violation of Fair Debt Collections Practices Act 15 USC 1692 et. Seq. (FDCPA); and
(2) Violation of Fair Credit Reporting Act 15 USC 1681 et seq. (FCRA), filed on or about
February 21, 2012 (the "Complaint") as follows:

1. Answering the allegations that are directed to Suttell in the unnumbered
paragraphs at pages 2 and 3 of the Complaint, the allegations state legal conclusions to which
no response is required. To the extent a response is required, Suttell denies that in engaged in

1 any “wrongful actions,” and denies that the debt at issue is not the plaintiff Coleen Auxier’s.
2 Except as expressly denied, Suttell is without knowledge or information sufficient to form a
3 belief as to the truth or falsity of the allegations, and therefore denies them.

4 2. Answering the allegations in paragraph 1.1 of the Complaint, Suttell does not
5 contest jurisdiction or venue.

6 3. Answering the allegations in paragraph 1.2 of the Complaint, Suttell is without
7 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
8 and therefore denies them.

9 4. Answering the allegations in paragraph 1.3 of the Complaint, Suttell is without
10 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
11 and therefore denies them.

12 5. Answering the allegations in paragraph 1.4 of the Complaint, Suttell is without
13 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
14 and therefore denies them.

15 6. Answering the allegations in paragraph 1.5 of the Complaint, Suttell admits that
16 it is a law firm and a professional service corporation, but denies that its primary office location
17 is Mercer Island, Washington. Except as expressly admitted or denied, Suttell is without
18 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
19 allegations, and therefore denies them.

20 7. Answering the allegations in paragraph 1.6 of the Complaint, Suttell admits that
21 FIA is a national bank. Except as expressly admitted, Suttell is without knowledge or
22 information sufficient to form a belief as to the truth or falsity of the remaining allegations, and
23 therefore denies them.

1 8. Answering the allegations in paragraph 2.1 of the Complaint, Suttell denies that
2 the plaintiffs are the victims of identity theft with respect to the subject account. Except as
3 expressly denied, Suttell is without knowledge or information sufficient to form a belief as to
4 the truth or falsity of the remaining allegations, and therefore denies them.

5 9. Answering the allegations in paragraph 2.2 of the Complaint, Suttell is without
6 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
7 and therefore denies them.

8 10. Answering the allegations in paragraph 2.3 of the Complaint, Suttell is without
9 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
10 and therefore denies them.

11 11. Answering the allegations in paragraph 2.4 of the Complaint, Suttell admits that
12 it sent a letter to plaintiff Coleen Auxier. Except as expressly admitted, Suttell is without
13 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
14 allegations, and therefore denies them.

15 12. Answering the allegations in paragraph 2.5 of the Complaint, Suttell admits that
16 it received a letter on or about October 13, 2010. Except as expressly admitted, Suttell denies
17 the remaining allegations in paragraph 2.5 of the Complaint.

18 13. Answering the allegations in paragraph 2.6 of the Complaint, Suttell is without
19 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
20 and therefore denies them.

21 14. Answering the allegations in paragraph 2.7 of the Complaint, Suttell admits that
22 it served the plaintiff Coleen Auxier with process. Except as expressly admitted, Suttell denies
23 the remaining allegations in paragraph 2.7 of the Complaint.

1 15. Answering the allegations in paragraph 2.8 of the Complaint, Suttell admits that
2 plaintiff Coleen Auxier demanded that Suttell file suit. Except as expressly admitted, Suttell
3 denies the remaining allegations in paragraph 2.8 of the Complaint.

4 16. Suttell denies the allegations in paragraph 2.9 of the Complaint.

5 17. Answering the allegations in paragraph 2.10 of the Complaint, Suttell admits
6 that it filed a complaint against the plaintiff Coleen Auxier on or about September 20, 2011.
7 Except as expressly admitted, Suttell denies the remaining allegations in paragraph 2.10 of the
8 Complaint.

9 18. Answering the allegations in paragraph 2.11 of the Complaint, Suttell admits
10 that the plaintiff Coleen Auxier filed a motion to dismiss, which was denied. Except as
11 expressly admitted, Suttell denies the remaining allegations in paragraph 2.11 of the Complaint.

12 19. Answering the allegations in paragraph 3.1.1 of the Complaint, Suttell
13 incorporates its responses to paragraphs 1.1 through 2.11 as if set forth fully herein.

14 20. Answering the allegations in paragraph 3.1.2 of the Complaint, Suttell is without
15 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
16 and therefore denies them.

17 21. Answering the allegations in paragraph 3.1.3 of the Complaint, Suttell is without
18 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
19 and therefore denies them.

20 22. Answering the allegations in paragraph 3.1.4 of the Complaint, Suttell is without
21 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations,
22 and therefore denies them.

23 23. Suttell denies the allegations in paragraph 3.1.5 of the Complaint.

1 3. If there was any violation of the Fair Debt Collection Practices Act (which is
2 denied), it was the result of a bona fide error.

3 4. Plaintiffs' claims are barred or precluded by the doctrines of collateral estoppel
4 and/or res judicata.

5 5. Plaintiff's claims are barred and/or the Court lacks jurisdiction under the
6 *Rooker-Feldman* doctrine.

7 6. Plaintiff Josh Auxier lacks standing and has failed to state a claim.

8 7. Suttell reserves the right to assert additional defenses that may become known
9 through discovery or further investigation.

10 WHEREFORE defendant Suttell prays for the following relief:

11 A. That judgment be entered in favor of Suttell;

12 B. That Plaintiffs' Complaint and each of its counts be dismissed with prejudice;

13 C. That Suttell be awarded costs and fees to the extent permitted by law; and

14 D. That the Court award such other relief as is just and proper under the
15 circumstances

16 DATED this 16th day of March, 2012.

17
18 Davis Wright Tremaine LLP
19 Attorneys for Defendants Suttell & Hammer P.S.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system; and

I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Josh Auxier
Coleen Auxier
19210 3RD AVE S
DES MOINES, WA 98148
206-551-1786
Email: joshandcoleen@gmail.com

I certify under penalty of perjury that the foregoing is true and correct. Executed at Seattle, Washington this 16th day of March, 2012.

Davis Wright Tremaine LLP
Attorneys for Defendants Suttell & Hammer P.S.

By s/ Brad Fisher
Brad Fisher, WSBA #19895